

110TH CONGRESS  
1ST SESSION

# H. R. 369

To require accountability for personnel performing private security functions under Federal contracts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 2007

Mr. PRICE of North Carolina (for himself, Mr. SPRATT, Mr. WAXMAN, Ms. SCHAKOWSKY, Mr. SHAYS, Mr. CONYERS, Mr. SNYDER, Mr. COOPER, Mr. WEXLER, Mr. BURTON of Indiana, Mr. BLUMENAUER, Ms. MCCOLLUM of Minnesota, Mr. ETHERIDGE, Mr. MILLER of North Carolina, Mr. FARR, Mr. VAN HOLLEN, Mr. DEFazio, Mr. HONDA, Ms. JACKSON-LEE of Texas, and Mr. HOLT) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require accountability for personnel performing private security functions under Federal contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Transparency and Accountability in Security Contracting  
6 Act of 2007”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Requirements related to personnel performing private security functions under Federal contracts during contingency operations.
- Sec. 3. Requirements for improving coordination between the United States Armed Forces and contractors performing private security functions in contingency operations.
- Sec. 4. Legal status of contract personnel.
- Sec. 5. Federal Bureau of Investigation investigative unit for contingency operations.
- Sec. 6. Government Accountability Office analysis of cost effectiveness of private security contracting.
- Sec. 7. Definitions.
- Sec. 8. Effective date.

**SEC. 2. REQUIREMENTS RELATED TO PERSONNEL PERFORMING PRIVATE SECURITY FUNCTIONS UNDER FEDERAL CONTRACTS DURING CONTINGENCY OPERATIONS.**

(a) ACCOUNTABILITY REQUIREMENTS FOR PERSONNEL PERFORMING PRIVATE SECURITY FUNCTIONS UNDER FEDERAL CONTRACTS OR SUBCONTRACTS DURING CONTINGENCY OPERATIONS.—

(1) REQUIREMENT TO PROVIDE CERTAIN INFORMATION ABOUT PERSONNEL PERFORMING PRIVATE SECURITY FUNCTIONS.—Each covered contract shall require the contractor to provide to the contracting officer for the contract, not later than 5 days after award of the contract, the following information regarding private security functions to be performed under the contract:

1 (A) The approximate number of persons to  
2 be used to perform the private security func-  
3 tions.

4 (B) A description of the process used to  
5 hire such persons, including the method by  
6 which and the extent to which background  
7 checks regarding such persons are conducted.

8 (C) A description of how such persons are  
9 trained to carry out tasks specified under the  
10 contract relating to such functions.

11 (D) A description of each category of activ-  
12 ity relating to such functions required by the  
13 contract.

14 (2) UPDATES OF INFORMATION.—The informa-  
15 tion provided under paragraph (1) shall be updated  
16 by the contractor during contract performance as  
17 necessary.

18 (3) SAFEGUARDING INFORMATION.—The head  
19 of each agency awarding a covered contract shall  
20 take such actions as are necessary to protect any in-  
21 formation provided under paragraph (1) that is a  
22 trade secret, or commercial or financial information,  
23 from disclosure to persons outside the Government.

24 (4) ACCOUNTING.—Each covered contract shall  
25 include the following requirements:

1           (A) Upon award of the contract, the con-  
2           tractor shall provide cost estimates of salary,  
3           benefits, insurance, materials, logistics, travel,  
4           administrative costs, and other costs of carrying  
5           out private security functions under the con-  
6           tract.

7           (B) Before contract closeout (other than  
8           closeout of a firm, fixed price contract), the  
9           contractor shall provide a report on the actual  
10          costs of carrying out private security functions  
11          under the contract, in the same categories as  
12          provided under subparagraph (A).

13          (5) OVERSIGHT.—Before a covered contract is  
14          awarded, the head of the agency awarding the con-  
15          tract shall ensure that sufficient resources are avail-  
16          able to enable contracting officers of the agency to  
17          perform oversight of the performance of the con-  
18          tract, including oversight inspections of facilities and  
19          operations.

20          (6) WAIVER AUTHORITY.—

21               (A) WAIVER.—The head of the agency  
22               awarding a covered contract may waive a re-  
23               quirement of this section with respect to a con-  
24               tract in an emergency or exceptional situation,  
25               as determined by the head of the agency. Any

1 such waiver shall be limited to the requirements  
2 that are impossible or impracticable to imple-  
3 ment because of the emergency or exceptional  
4 situation.

5 (B) REPORT.—In any case in which the  
6 head of an agency waives a requirement under  
7 this section with respect to a contract, the  
8 agency head shall prepare a report that—

9 (i) describes the contract, the waiver,  
10 and the emergency or exceptional situation  
11 that justified the waiver; and

12 (ii) contains a plan for bringing the  
13 contract into compliance with the waived  
14 requirements as soon as possible or an ex-  
15 planation of why the waiver needs to be  
16 permanent.

17 (C) SUBMISSION OF REPORT.—The report  
18 required by subparagraph (B) shall be sub-  
19 mitted, within 30 days after the date of the  
20 waiver, to—

21 (i) the Committees on Appropriations,  
22 Armed Services, Oversight and Govern-  
23 ment Reform, and Foreign Affairs of the  
24 House of Representatives; and

(ii) the Committees on Appropriations, Armed Services, Homeland Security and Governmental Affairs, and Foreign Relations of the Senate.

(c) REPORT REQUIRED.—

(1) IN GENERAL.—During a contingency operation, the head of each agency with any covered contracts in effect shall submit to Congress reports on the contracts in accordance with this subsection.

(2) MATTERS COVERED.—The report required by paragraph (1) shall include the following information:

(A) Total number of covered contracts awarded by the agency with respect to the contingency operation.

(B) The total number of contracting officers overseeing the covered contracts reported in subparagraph (A).

(C) Number of covered contracts awarded since the last report.

(D) Total number of contract personnel working on the covered contracts reported in subparagraph (C).

(E) Total amount of awards for covered contracts reported in subparagraph (C).

1 (F) Catalogue of activities performed  
 2 under covered contracts reported in subpara-  
 3 graph (C).

4 (3) DEADLINES.—The head of an agency shall  
 5 submit an initial report as required by paragraph  
 6 (1) within 90 days after first awarding a covered  
 7 contract, and shall issue additional reports every 90  
 8 days.

9 (4) COMMITTEES.—The report required by  
 10 paragraph (1) shall be submitted to the Committees  
 11 on Appropriations and Armed Services of the House  
 12 of Representatives and the Senate.

13 (5) FORMAT.—The report required by para-  
 14 graph (1) shall be submitted in unclassified format,  
 15 but may include a classified annex as necessary.

16 **SEC. 3. REQUIREMENTS FOR IMPROVING COORDINATION**  
 17 **BETWEEN THE UNITED STATES ARMED**  
 18 **FORCES AND CONTRACTORS PERFORMING**  
 19 **PRIVATE SECURITY FUNCTIONS IN CONTIN-**  
 20 **GENCY OPERATIONS.**

21 (a) RULES OF ENGAGEMENT.—

22 (1) REQUIREMENT TO ISSUE.—Not later than  
 23 15 days after the date when a contingency operation  
 24 is initiated, the Chairman of the Joint Chiefs of  
 25 Staff shall issue rules of engagement regarding the

1 circumstances under which force may be used by  
2 contract personnel performing private security func-  
3 tions within the area covered by the contingency op-  
4 eration and the types of force authorized. Each cov-  
5 ered contract shall require contract personnel to ad-  
6 here to the rules of engagement issued under this  
7 subsection.

8 (2) NOTIFICATION.—The commander of the  
9 combatant command whose area of responsibility in-  
10 cludes the contingency operation shall communicate  
11 the rules of engagement to contract personnel in ac-  
12 cordance with subsection (c).

13 (3) EXCEPTIONS AND SPECIAL RULES.—As ap-  
14 propriate, the Chairman of the Joint Chiefs of Staff  
15 may provide exceptions or special rules in the rules  
16 of engagement for specific contractors.

17 (b) HIRING, TRAINING, AND EQUIPMENT STAND-  
18 ARDS RELATING TO PRIVATE SECURITY CONTRACTORS.—

19 (1) REGULATIONS.—Not later than 30 days  
20 after the initiation of a contingency operation, the  
21 head of each agency awarding a covered contract  
22 shall prescribe in regulations minimum standards  
23 (appropriate for the agency) for contract personnel,  
24 including minimum training and certification stand-  
25 ards. The standards may vary based on the duties



1 of personnel, but must address criminal records, se-  
2 curity clearance requirements, and other issues that  
3 the head of the agency determines may lead to secu-  
4 rity or performance concerns.

5 (2) GUIDANCE FOR EQUIPMENT.—The head of  
6 each agency awarding a covered contract shall issue  
7 guidance (appropriate for the agency) on equipment  
8 used for private security functions under covered  
9 contracts with the agency, including appropriate uni-  
10 forms and levels of body armor and equipment  
11 armor, and a recommended list of re-armors and  
12 weapons and armor manufacturers for complying  
13 with such guidelines.

14 (3) CONSULTATION WITH SECRETARY OF DE-  
15 FENSE.—The head of each agency shall consult with  
16 the Secretary of Defense in developing regulations  
17 and guidance under this subsection.

18 (c) IMPROVED COORDINATION AND COMMUNICATION  
19 BETWEEN U.S. ARMED FORCES AND CONTRACTORS PER-  
20 FORMING PRIVATE SECURITY FUNCTIONS.—

21 (1) ESTABLISHMENT OF A THEATER SECURITY  
22 CONTRACT COORDINATING OFFICER.—For each con-  
23 tingency operation in which contract personnel are  
24 active, the Chairman of the Joint Chiefs of Staff

1 shall designate a Theater Security Contract Coordi-  
2 nating Officer.

3 (2) RESPONSIBILITIES OF THEATER SECURITY  
4 CONTRACT COORDINATING OFFICER.—The Theater  
5 Security Contract Coordinating Officer shall—

6 (A) establish regulations providing for reli-  
7 able lines of communications between contract  
8 personnel and U.S. Armed Forces;

9 (B) maintain a current database of the  
10 number of contract personnel and the nature of  
11 their activities;

12 (C) communicate the rules of engagement,  
13 established under subsection (a), to contractors  
14 and contract personnel;

15 (D) communicate other critical informa-  
16 tion, including guidance on Department of De-  
17 fense responsibilities for force protection of con-  
18 tract personnel and guidance on equipment, to  
19 contractors and contract personnel; and

20 (E) as appropriate, communicate up-to-  
21 date information about the security environ-  
22 ment that may be relevant to contract per-  
23 sonnel.

24 (3) REQUIREMENTS FOR CONTRACTORS RELAT-  
25 ING TO THE THEATER SECURITY CONTRACT COORDI-

1       NATING OFFICER.—Contractors shall be required  
2       to—

3               (A) register with the designated Theater  
4       Security Contract Coordinating Officer for the  
5       theater in which the covered contract is per-  
6       formed, and to report to the Officer the number  
7       of personnel assigned to perform the covered  
8       contract;

9               (B) report any incidents in which contract  
10      personnel use force or are attacked by hostile  
11      forces;

12              (C) report to the Theater Security Con-  
13      tract Coordinating Officer any casualties suf-  
14      fered by covered contract personnel;

15              (D) communicate to the Theater Security  
16      Contract Coordinating Officer, in accordance  
17      with the regulations issued under paragraph  
18      (2)(A), tactical information, such as informa-  
19      tion on the movement of contractor personnel  
20      into and out of a battle space; and

21              (E) communicate to the Theater Security  
22      Contract Coordinating Officer relevant informa-  
23      tion, including intelligence, reports of hostile ac-  
24      tivity, or information relevant to military plan-  
25      ning.

1 **SEC. 4. LEGAL STATUS OF CONTRACT PERSONNEL.**

2 (a) CLARIFICATION OF THE MILITARY  
3 EXTRATERRITORIAL JURISDICTION ACT.—

4 (1) INCLUSION OF CONTRACTORS.—Subsection  
5 (a) of section 3261 of title 18, United States Code,  
6 is amended—

7 (A) by striking “or” at the end of para-  
8 graph (1);

9 (B) by striking the comma at the end of  
10 paragraph (2) and inserting “; or”; and

11 (C) by inserting after paragraph (2) the  
12 following:

13 “(3) while employed under a contract (or sub-  
14 contract at any tier) awarded by any department or  
15 agency of the United States Government, where the  
16 work under such contract is carried out in a region  
17 outside the United States in which the Armed  
18 Forces are conducting a contingency operation.”.

19 (2) DEFINITION.—Section 3267 of title 18,  
20 United States Code, is amended by adding at the  
21 end the following:

22 “(5) The term ‘contingency operation’ has the  
23 meaning given that term in section 101(a)(13) of  
24 title 10.”.

1 (b) SENSE OF CONGRESS REGARDING INVESTIGA-  
2 TION AND PROSECUTION OF ABUSES BY PRIVATE SECU-  
3 RITY CONTRACTORS.—It is the sense of Congress that—

4 (1) if there is probable cause to believe that an  
5 individual assigned to perform work under a covered  
6 contract has violated section 3261(a) of title 18, ex-  
7 cept in situations in which the individual is pros-  
8 ecuted under the Uniform Code of Military Justice  
9 or under other law, the Department of Defense  
10 should use the authority provided in section 3262 of  
11 title 18, United States Code, to arrest and detain  
12 that individual and transfer that individual to civil-  
13 ian authorities for prosecution; and

14 (2) the Secretary of Defense should issue guid-  
15 ance, as soon as possible after the date of the enact-  
16 ment of this Act, on how the amendment made by  
17 section 552 of the John Warner National Defense  
18 Authorization Act of 2007 (Public Law 109–364;  
19 120 Stat. 2217) to section 802(a)(10) of title 10,  
20 United States Code (article 2(a)(10) of the Uniform  
21 Code of Military Justice), will be implemented.

22 (c) DEPARTMENT OF JUSTICE INSPECTOR GENERAL  
23 REPORT.—

24 (1) REPORT REQUIRED.—Not later than 30  
25 days after the date of the enactment of this Act, the

1 Inspector General of the Department of Justice shall  
2 submit to Congress a report.

3 (2) CONTENT OF REPORT.—The report shall in-  
4 clude—

5 (A) a description of the status of Depart-  
6 ment of Justice investigations of abuses alleged  
7 to have been committed by contract personnel,  
8 which shall include—

9 (i) the number of complaints received  
10 by the Department of Justice;

11 (ii) the number of investigations into  
12 complaints opened by the Department of  
13 Justice;

14 (iii) the number of criminal cases  
15 opened by the Department of Justice; and

16 (iv) the number and result of criminal  
17 cases closed by the Department of Justice;  
18 and

19 (B) findings and recommendations about  
20 the capacity and effectiveness of the Depart-  
21 ment of Justice in prosecuting misconduct by  
22 contract personnel.

23 (3) FORMAT OF REPORT.—The report shall be  
24 submitted in unclassified format, but may contain a  
25 classified annex as appropriate.

1 **SEC. 5. FEDERAL BUREAU OF INVESTIGATION INVESTIGA-**  
2 **TIVE UNIT FOR CONTINGENCY OPERATIONS.**

3 (a) ESTABLISHMENT OF THEATER INVESTIGATIVE  
4 UNIT.—For each theater of operations established in con-  
5 nection with a contingency operation in which contract  
6 personnel are carrying out work under a covered contract,  
7 the Federal Bureau of Investigation shall establish a The-  
8 ater Investigative Unit, which shall be responsible for in-  
9 vestigating allegations of criminal misconduct under sec-  
10 tion 3261 of title 18, United States Code, by contract per-  
11 sonnel.

12 (b) RESPONSIBILITIES OF THEATER INVESTIGATIVE  
13 UNIT.—The Theater Investigative Unit established for a  
14 theater of operations shall—

15 (1) investigate reports that raise reasonable  
16 suspicion of criminal misconduct by contract per-  
17 sonnel;

18 (2) investigate reports of fatalities resulting  
19 from the use of force by contract personnel; and

20 (3) upon conclusion of an investigation of al-  
21 leged criminal misconduct, refer the case to the At-  
22 torney General of the United States for further ac-  
23 tion, as appropriate in the discretion of the Attorney  
24 General.

25 (c) RESPONSIBILITIES OF FEDERAL BUREAU OF IN-  
26 VESTIGATION.—

1           (1) RESOURCES.—The Federal Bureau of In-  
2           vestigation shall ensure that each Theater Investiga-  
3           tive Unit has adequate resources and personnel to  
4           carry out its responsibilities.

5           (2) NOTIFICATION.—The Federal Bureau of In-  
6           vestigation shall notify Congress whenever a Theater  
7           Investigative Unit is established or terminated in ac-  
8           cordance with this section.

9           (d) RESPONSIBILITIES OF OTHER FEDERAL AGEN-  
10          CIES.—An agency operating in a theater of operations in  
11          which a Theater Investigative Unit is established shall co-  
12          operate with and support the activities of the Theater In-  
13          vestigative Unit. Any investigation carried out by the In-  
14          specter General of an agency shall be coordinated with the  
15          activities of the unit as appropriate.

16   **SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE ANALYSIS**  
17                           **OF COST EFFECTIVENESS OF PRIVATE SECU-**  
18                           **RITY CONTRACTING.**

19          (a) STUDY REQUIRED.—The Comptroller General  
20          shall conduct a study of the total costs to the Federal Gov-  
21          ernment related to procuring security services through pri-  
22          vate security contractors, including costs relating to com-  
23          pensation, administration (including insurance and health  
24          care), and equipment, in comparison to providing such se-



1 curity services using employees of the Federal Government  
 2 and members of the Armed Forces.

3 (b) SUBMISSION OF RESULTS.—The Comptroller  
 4 General shall submit to Congress a report detailing the  
 5 findings of the study required by subsection (a) and such  
 6 recommendations as the Comptroller General considers  
 7 appropriate within 270 days after the date of the enact-  
 8 ment of this Act.

9 **SEC. 7. DEFINITIONS.**

10 In this Act:

11 (1) COVERED CONTRACT.—The term “covered  
 12 contract” means—

13 (A) a prime contract awarded by an agen-  
 14 cy, if the work to be performed under the con-  
 15 tract includes private security functions;

16 (B) a subcontract at any tier under any  
 17 prime contract awarded by an agency, if the  
 18 work to be performed under the subcontract in-  
 19 cludes private security functions; or

20 (C) a task order issued under a task or de-  
 21 livery order contract entered into by an agency,  
 22 if the work to be performed under the task  
 23 order includes private security functions.

24 (2) PRIVATE SECURITY FUNCTIONS.—The term  
 25 “private security functions”, with respect to activi-

1       ties carried out under a covered contract in a the-  
2       ater in which the United States is engaged in a con-  
3       tingency operation, means—

4               (A) any activities for which personnel are  
5       allowed to carry weapons in the performance of  
6       the contract;

7               (B) the performance of—

8                       (i) military logistics and maintenance;

9                       (ii) interrogation of prisoners;

10                      (iii) convoy security;

11                      (iv) guarding vital facilities and per-  
12       sonnel;

13                      (v) tactical security work; or

14                      (vi) local force training; or

15               (C) any other activity in support of the  
16       contingency operation, as determined by the  
17       Theater Security Contract Coordinating Officer.

18       (3) AGENCY.—The term “agency” has the  
19       meaning given the term “Executive agency” in sec-  
20       tion 105 of title 5, United States Code.

21       (4) CONTINGENCY OPERATION.—The term  
22       “contingency operation” has the meaning given the  
23       term section 101(13) of title 10, United States  
24       Code.

1           (5) CONTRACTOR.—The term “contractor”  
2 means an entity performing a covered contract.

3           (6) CONTRACT PERSONNEL.—The term “con-  
4 tract personnel” means persons assigned by a con-  
5 tractor (including subcontractors at any tier) to per-  
6 form work under a covered contract.

7 **SEC. 8. EFFECTIVE DATE.**

8           (a) APPLICABILITY.—The provisions of this Act shall  
9 apply to the following:

10           (1) All covered contracts and all covered con-  
11 tract personnel in which the work under the contract  
12 is carried out in a theater in which the United  
13 States is currently conducting contingency oper-  
14 ations.

15           (2) In the event that the United States begins  
16 new contingency operations, all covered contracts  
17 and all covered contract personnel in which the work  
18 under the contract is carried out in a theater in  
19 which the United States is conducting such contin-  
20 gency operations.

21           (b) IMMEDIATE EFFECTIVENESS.—The provisions of  
22 this Act shall enter into effect immediately upon the enact-  
23 ment of this Act.

24           (c) IMPLEMENTATION.—With respect to covered con-  
25 tracts and covered contract personnel discussed in sub-

1 section (a)(1), the United States Government shall have  
2 90 days following the enactment of this Act to ensure com-  
3 pliance with the provisions of this Act.

○